A **PUBLIC ISLAMIC BANK BHD v. EDWIN CASSIAN NAGAPPAN**

COURT OF APPEAL, PUTRAJAYA
AZIZAH NAWAWI JCA
COLLIN LAWRENCE SEQUERAH JCA
ALWI ABDUL WAHAB JCA
B [CIVIL APPEAL NO: W-04(IM)(NCVC)-20-01-2022]
28 NOVEMBER 2025

Abstract – *An application for leave of court under s. 16(1A) of the Hire-Purchase Act 1967, required when a hirer has paid more than 75% of the vehicle's cash price, may be filed ex parte via originating summons. It is not mandatory for such an application to be inter partes, as the court's role is limited to verifying the satisfaction of statutory conditions, specifically the 75% payment threshold and the existence of two consecutive defaults, rather than adjudicating a final right to repossession.*

CONTRACT: *Agreement – Hire-purchase agreement – Breach – Bank hired vehicle to hirer – Hirer failed to pay instalments – Hirer had paid over 75% of vehicle's value – Bank obtained leave to proceed with repossession process – Whether application for leave under s. 16(1A) Hire-Purchase Act 1967 ought to be made inter partes – Whether ex parte application via originating summons permissible – Rules of Court 2012, O. 7 r. 2*

By way of a hire-purchase agreement, the appellant hired out a vehicle to the respondent. The respondent breached the said agreement by failing, refusing and/or neglecting to make the instalment payments for at least seven months. Since the respondent had already made instalment payments exceeding 75% of the vehicle's cash price, the appellant, in accordance with the provisions of the Hire-Purchase Act 1967 ('HPA'), applied for leave from the Magistrates' Court before issuing the statutory notices to commence the exercise of its rights to repossess the vehicle. Leave was granted. The appellant then issued the statutory notices to the respondent before carrying out the repossession process of the vehicle. The respondent completely ignored the said notices and continued to refuse and/or fail to pay the outstanding amount. After the expiry of 21 days, the appellant proceeded with the physical repossession of the vehicle. The appellant had also initiated legal proceedings against the respondent to claim the total outstanding sum owed and had obtained a judgment against the respondent. As the respondent ignored the said judgment, the appellant commenced the repossession process. The respondent later applied to the Magistrates' Court to set aside the leave granted earlier, on the ground that the application, *via* originating summons ('OS'), ought to have been made *inter partes* and not *ex parte.* The

respondent's application was dismissed. The High Court allowed the respondent's appeal and set aside the leave order granted by the Magistrate. The appellant applied for leave to appeal and leave was granted for the substantive appeal against the decision of the High Court Judge ('HCJ') in setting aside the leave order granted by the Magistrate. The primary issue that arose for adjudication in this appeal was whether it was mandatory for an OS filed for the purpose of obtaining leave of court, under s. 16(1A) of the HPA, to be filed *inter partes*.

Held (allowing appeal; reinstating decision of Magisrates' Court)
Per Azizah Nawawi JCA delivering the judgment of the court:

(1) The appellant's right to repossess a hire-purchase vehicle arose from statute and did not require any prior order of the court. Pursuant to s. 16(1) of the HPA, the owner may repossess goods under a hire-purchase agreement only if the hirer had paid not more than 75% of the total cash price, had defaulted on at least two consecutive instalments and had been served with a Fourth Schedule notice, with 21 days having passed since its service. (para 37)

(2a) The purpose of the appellant's application to the court, under s. 16(1A) of the HPA, was limited only to obtaining leave to issue the statutory notices in situations where more than 75% of the vehicle's cash price had been paid by the respondent. This requirement for leave served as a procedural safeguard to ensure that the statutory conditions, namely the existence of two consecutive instalment defaults and the applicability of the 75% rule, had been satisfied before the statutory notice was issued for the purpose of repossession. (paras 38)

(2b) This leave was not an authorisation to repossess the vehicle. It merely permitted the appellant to begin the statutory notice process required under the HPA. Actual repossession may only be carried out after the statutory notices were duly served and the statutory period had expired without any payment made by the respondent. Therefore, the application to the court served the narrow and specific purpose of enabling the appellant to issue the statutory notices in compliance with the HPA, while simultaneously preserving the respondent's added protection in cases where more than 75% of the cash price had been paid. (para 39)

(3) The Rules of Court 2012 allowed an application for an OS to be filed *ex parte* when the application was simply to prove to the court that the instalment payments had exceeded 75% of the vehicle's price and that there were two consecutive defaults on the hire-purchase account by the respondent. The court did not agree with the HCJ that the application for leave, under s. 16(1A), must be made *inter partes* and any breach of the same amounted to a breach of natural justice. The purpose of getting

A the court's leave to issue statutory notices was to ensure that the twin requirements under s. 16(1A) had been met. The only difference between s. 16(1) and 16(1A) was that under s. 16(1A), more than 75% of the cash price had been paid. Since the hirer had paid more than 75% of the loan agreement, it was only fair that before the car could be
B repossessed, leave must be obtained from the court to ensure the requirements of s. 16(1A) had been met. (paras 41 & 42)

Case(s) referred to:
BBMB Kewangan Bhd v. Tan Swee Heng & Anor [2002] 7 CLJ 377 HC ***(refd)***
Credit Corporation (M) Bhd v. The Malaysia Industrial Finance Corporation & Anor
C *[1975] CLJU 22; [1975] 1 LNS 22 HC* ***(refd)***
Low Ping Ming v. MBf Finance Bhd [2000] 2 CLJ 307 HC ***(refd)***
Metro Tyre Service Centre Sdn Bhd v. Wilfred Jolly [2003] 8 CLJ 376 HC ***(refd)***
Ong Siew Hwa v. UMW Toyota Motor Sdn Bhd [2018] 8 CLJ 145 FC ***(refd)***

Legislation referred to:
Hire-Purchase Act 1967, ss. 2, 16(1), (1A), (1B), (4), Fourth Schedule
D Hire-Purchase (Application of Permit and Procedure of Repossession) Regulations 2011, reg. 15(1)
Rules of Court 2012, O. 85A

For the appellant - Tan Hong Kait & Divani Keruna Nithi; M/s Sidek Teoh Wong & Dennis
E *Respondent - Absent*

[Editor's note: Appeal from High Court, Kuala Lumpur; Civil Appeal No: WA11A-NCVC-181-10-2019 (overruled).]

Reported by Najib Tamby

F **JUDGMENT**

Azizah Nawawi JCA:

Introduction

[1] This is an appeal against the decision of the learned High Court Judge
G dated 10 March 2020 in allowing an appeal by the respondent against the decision of the Magistrate dated 17 October 2019 in dismissing the respondent's notice of application to set aside the leave granted under sub-s. 16(1A) of the Hire-Purchase Act 1967 ("HPA 1967").

The Salient Facts
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[2] *Vide* a hire-purchase agreement dated 4 January 2008 ("the agreement"), the appellant hired out a reconditioned used vehicle, namely a Mercedes Benz CLS 350 bearing registration number WQQ 2628 ("the vehicle"), to the respondent.

I **[3]** The respondent had breached the agreement by failing, refusing, and/or neglecting to make the instalment payments on time, and there were outstanding instalments for at least seven months as of January 2017.

[4] Therefore, the appellant intended to repossess the vehicle pursuant to the HPA 1967. Since the respondent had already made instalment payments exceeding 75% of the vehicle's cash price, the appellant, in accordance with the provisions of the HPA 1967, was required to obtain leave of the court before issuing the statutory notices to commence the exercise of its rights to repossess the vehicle.

[5] The appellant then filed Originating Summons No: WA-A74-96-01-2018 and applied for leave from the Magistrates' Court on 25 January 2018. Under s. 16(1A) of the HPA 1967, the conditions that must be satisfied before leave may be granted are:

(i) instalment payments exceeding 75% of the cash price; and

(ii) at least two consecutive instalment defaults committed by the respondent.

[6] Since both conditions under sub-s. 16(1A) of the HPA 1967 were fulfilled, the Magistrates' Court granted the leave sought by the appellant.

[7] The appellant complied with the court's order and the provisions of the HPA 1967 by issuing the statutory notices to the respondent before carrying out the repossession process of the vehicle, as required under the Fourth Schedule.

[8] A notice under reg. 15(1) of the Hire-Purchase (Application of Permit and Procedure of Repossession) Regulations 2011 dated 16 March 2018 was also issued and sent by registered post.

[9] Despite having been served with the statutory notices and that the respective periods had expired, the respondent had completely ignored the said notices and continued to refuse and/or fail to pay the outstanding amount.

[10] After the expiry of the 21-day period of the Fourth Schedule Notice, the appellant then proceeded with the physical repossession of the vehicle, and the vehicle was successfully repossessed on 15 February 2019. This was approximately 11 months after the Fourth Schedule Notice was issued.

[11] An acknowledgment of receipt letter dated 18 February 2019 under s. 16(4) of the HPA 1967 was also sent to the respondent by registered post.

[12] At that time, the appellant had also initiated legal proceedings against the respondent to claim the total outstanding sum owed by the respondent and had obtained a judgment dated 30 April 2018 against the respondent.

[13] However, since the respondent had also ignored this judgment, the appellant had no other alternative but to commence the repossession process.

[14] On 31 May 2019, the respondent filed a notice of application before the Magistrates' Court to set aside the leave granted by the Magistrates' Court.

[15] The only ground relied by the respondent is that the application for leave *via* originating summons should have been made *inter partes*, and not *ex parte*.

[16] After the hearing the parties, on 17 October 2019, the Magistrate had dismissed the respondent's notice of application (Annexure 5) with costs.

[17] Dissatisfied with this decision, the respondent had filed a notice of appeal in the High Court. The High Court had allowed the respondent's appeal on 10 March 2020 and set aside the leave order granted by the Magistrate.

[18] Hence the appellant has applied for leave to appeal leave was granted for the substantive appeal against the decision of the learned judge in setting aside the leave order granted by the Magistrate.

Decision Of The High Court

[19] The learned High Court Judge has allowed the respondent's appeal based on the following grounds:

> [11] Firstly, it is a trite law that an irregular judgment can and ought to be set aside *ex debito justitae* (as a matter of right) irrespective of merits and without terms when it is clearly demonstrated to the satisfaction of the court that the judgment hat not been regularly obtained even when the timeline provided under the rules had been complied with (see the Federal Court decision in *Tuan Haji Ahmad Abdul Rahman v. Malayan Banking Bhd* [1996] 1 MLJ 30). Thus, if the *Ex-Parte* Order in this case was wrongly obtained by the Respondent, the said *Ex-Parte* Order must be set aside.
>
> [12] Secondly, I do take note of the Respondent's objections on the defects of the Appellant's Affidavit in Support for the purported non-compliance of the provisions of Order 41 Rule 1(8) of the Rules of Court 2012. Be that as it may, the Appellant had applied orally for leave to use the said defective affidavits pursuant to the provisions of Order 41 Rule on the grounds that it does not prejudice the Respondents. Premised on the Federal Court decision of *Megat Najmuddin Dato' Seri (Dr) Megat Khas v. Bank Bumiputra Bhd* [2002] 1 CLJ 645 which discourages the raising of technical objections and that case should be decided on the merits, I allowed the Appellant's application.
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> [13] Thirdly, I am of the view that the *Ex-Parte* Order must be served on the Appellant prior to the Vehicle being re-possessed. In this case, the Order was only served to the Appellant on 29.3.2019 despite the vehicle being re-possessed on 15.2.2019. Had it been served on the Appellant earlier, they could have taken steps to set it aside immediately.

[14] Fourthly, having reviewed the provisions of Section 16(1A) and 1(B) of the Hire Purchase Act 1967, I am inclined to agree with the Appellant's submissions that an application for leave to – repossess such as in the present case before me cannot be done *ex-parte* as it would defeat the very purpose for which Parliament amended the provisions of the previous Section 16(1A) of the legislation concerned. In addition, I take the view that the position taken by the Respondent that the leave application can be done *ex- parte* is also not supported by Order 85A of the Rules of Court 2012.

[15] Lastly, this Court agrees with the Appellant's contention that by granting the leave application *ex-parte* and the Appellant then proceeding to re-possess the Vehicle without serving the papers not the *Ex-Parte* Order on the Appellant, there was a clear breach of the principles of natural justice and the '*audi alterem partem* rule'. To my mind, the Appellant had the right to be heard at all material times and at every step of the re-possession exercise (see the judgment of Tengku Maimun CJ in *Dr Lourdes Dava Raj Curuz Durai Raj v Dr. Milton Lum Siew Wah & Another* [2029] 9 CLJ 192 FC).

Our Decision

[20] The only legal issue in this appeal is whether it is mandatory for an originating summons filed for the purpose of obtaining leave of court under sub-s. 16(1A) of the HPA 1967 to be filed *inter parte*.

[21] Before we deal with the interpretation of s. 16(1A) of the HPA 1967, let us appreciate the positions of parties under the agreement. A hire-purchase agreement is a credit arrangement whereby the hirer is given possession of the goods while legal ownership remains with the owner or financier until all instalments are fully paid. Under such an arrangement, the hirer may use the goods immediately, subject to payments of the agreed deposit and monthly instalments. Ownership of the goods will only be transferred to the hirer after the completion of all payments. As the ownership remains with the financier during the term of the agreement, the financier may repossess the goods in the event of default, provided that all statutory requirements, such as those under the HPA 1967, have been strictly complied with.

[22] Therefore, under the agreement, the ownership of the vehicle remain with the appellant whilst the respondent is only the hirer of the vehicle. This is based on s. 2 of the HPA 1967 which provides as follows:

> "owner" means a person who lets or has let goods to a hirer under a hire-purchase agreement and includes a person to whom the owner's rights or liabilities under the agreement have passed by assignment or by operation of law.

[23] The following cases have explained the relationship and the rights of the parties under a hire-purchase agreement.

[24] In *BBMB Kewangan Bhd v. Tan Swee Heng & Anor* [2002] 7 CLJ 377; [2002] 2 MLRH 458, the court held as follows:

> In any case, even though the hirer was the registered owner of the vehicle, he was in law only a person who had possession and use of the car. This fact does not make him the legal owner of the vehicle.

[25] In *Low Ping Ming v. MBf Finance Bhd* [2000] 2 CLJ 307, Justice Steve Shim said as follows:

> A common characteristic or feature of such an agreement is that the hirer has the option of purchasing the goods. And throughout the period of hire-purchase, title to the goods remains with the owner. It is common practice nowadays for a finance company to be involved in a hire-purchase transaction as owner. For example the finance company buys the goods from the dealer who is paid the price and the finance company then steps into the dealer's shoes and becomes the owner for the purpose of the hire-purchase agreement. In this way, the finance company becomes the owner as well as financier.

[26] In *Metro Tyre Service Centre Sdn Bhd v. Wilfred Jolly* [2003] 8 CLJ 376; [2003] MLJU 406; [2003] 3 MLRH 217, the court held as follows:

> The legal owner is the person who owns and has an undisputed legal title to the vehicle. This is what the relevant section of the Hire Purchase Act is giving effect to.

[27] A *classis* description of a hire-purchase agreement was given by the Federal Court in *Ong Siew Hwa v. UMW Toyota Motor Sdn Bhd* [2018] 8 CLJ 145; [2018] 5 MLJ 281; [2018] 4 AMR 944; [2018] 5 MLRA 1, which is as follows:

> ... it is provided that if the hirer duly performed and observed all the stipulations and conditions in this agreement and pay to the owner all sums of money payable to the owner by the hirer, the hirer shall have an option of purchasing the goods and upon payment of the last instalment, the hirer is deemed to have exercised such option and the hiring shall come to an end and the goods shall become the property of the hirer and the owner shall assign all rights, benefits and interests in the goods to the hirer. But, until the option has been exercised, the goods shall remain the absolute property of the owner and the hirer shall not have any right or interest in the goods other than of a bailee. It must also be added that the fact that (as shown in the registration card) (p. 270, rekod rayuan (jilid 6)) the plaintiff was the registered owner of the car did not make him the legal owner of the car.

[28] In the present case, it is not in dispute that the respondent was the hirer under the hire-purchase agreement whilst the ownership remained with the appellant until the respondent had paid all the sums of money payable to the appellant under the agreement. Therefore, until the respondent had exercised his option to purchase the car by paying the total rentals and fulfilling all his

obligations under the agreement, no property in the car passed to the respondent. (see *Credit Corporation (M) Bhd v. The Malaysia Industrial Finance Corporation & Anor* [1975] CLJU 22; [1975] 1 LNS 22; [1976] 1 MLJ 83).

[29] The next issue is what happen when the hirer failed to make payments under the agreement. This is where s. 16 of the HPA 1967 is relevant. Section 16 reads:

> Repossession
>
> 16. Notices to be given to hirer when goods repossessed?
>
> (1) Subject to this section, an owner shall not exercise any power of taking possession of goods comprised in a hire-purchase agreement arising out of any breach of the agreement relating to the payment of instalments unless the payment of instalments amounts to not more than seventy-five percent of the total cash price of the goods comprised in the hire-purchase agreement and there had been two successive defaults of payment by the hirer and he has served on the hirer a notice, in writing, in the form set out in the Fourth Schedule and the period fixed by the notice has expired, which shall not be less than twenty-one days after the service of the notice.
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> (1A) Notwithstanding subsection (1), if the payment of instalments made amounts to more than seventy-five percent of the total cash price of the goods comprised in a hire-purchase agreement and there had been two successive defaults of payment by the hirer, an owner shall not exercise any power of taking possession of the goods comprised in the hire-purchase agreement arising out of any breach of the agreement relating to the payment of instalments unless he has obtained an order of the Court to that effect.
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> (1B) Where an owner has obtained an order of the court under subsection (1A) and he has served on the hirer a notice, in writing, in the form set out in the Fourth Schedule and the period fixed by the notice has expired, which shall not be less than twenty-one days after the service of the notice, the owner may exercise the power of taking possession of goods referred to in subsection (1A).
>
> (1C) Where a hirer is deceased, an owner shall not exercise any power of taking possession of goods comprised in a hire-purchase agreement arising out of any breach of the agreement relating to the payment of instalments unless there has been four successive defaults of payments.
>
> (2) An owner need not comply with subsection (1) if there are reasonable grounds for believing that the goods comprised in the hire-purchase agreement will be removed or concealed by the hirer contrary to the provisions of the agreement, but the onus of proving the existence of those grounds lies upon the owner.

A (3) Within twenty-one days after the owner has taken possession of goods that were comprised in a hire-purchase agreement he shall serve on the hirer and every guarantor of the hirer a notice, in writing, in the form set out in the Fifth Schedule.

(4) Where the owner takes possession of goods that were comprised in
B a hire-purchase agreement he shall deliver or cause to be delivered to the hirer personally a document acknowledging receipt of the goods or, if the hirer is not present at that time, send to the hirer immediately after taking possession of the goods a document acknowledging receipt of the goods.

(5) The document acknowledging receipt of the goods, required under
C subsection (4) shall set out a short description of the goods and the date on which, the time at which and the place where the owner took possession of the goods.

(6) If the notice required by subsection (3) is not served, the rights of the owner under the hire-purchase agreement thereupon cease and determine; but if the hirer exercises his rights under this Act to recover
D the goods so taken possession of, the agreement has the same force and effect in relation to the rights and liabilities of the owner and the hirer as it would have had if the notice had been duly given.

(7) Before and when exercising the power of taking possession the owner or his servant or agent shall, in addition to the provisions of this Act
E comply with any regulations relating to the manner of taking possession as may be prescribed.

[30] Under sub-s. 16(1), it is provided that an owner cannot repossess goods under a hire-purchase agreement for non-payment of instalments unless all of the following conditions are met:

F (i) not more than 75% of the total cash price has been paid;

(ii) the hirer had missed two instalment payments in a row; and

(iii) the owner had given the hirer a written notice (using the Fourth Schedule form), and at least 21 days have passed since the notice was
G served on the hirer).

[31] Under sub-s. 16(1), the owner is not entitled to repossess the goods under a hire-purchase agreement unless the hirer has failed to pay more than 75% of the total cash price, has missed at least two consecutive instalments, and the owner has served a written notice in the prescribed form (Fourth
H Schedule) with at least 21 days having elapsed after service. Repossession is therefore lawful only when all these three conditions are satisfied, and the failure to meet any of the conditions renders repossession unlawful under the HPA 1967.

I **[32]** In respect of sub-s. 16(1A), it provides that if the hirer has already paid more than 75% of the total cash price and then he misses two instalments in a row, the owner cannot repossess the goods for those payment defaults

unless the owner gets a court order before repossession. Therefore, getting a court order is a prerequisite in sub-s. 16(1A) before repossession can commence.

[33] Under sub-s. 16(1B), it provides that if the owner gets a court order under sub-s. (1A) and then serves the hirer a written notice (Fourth Schedule form), and at least 21 days have passed since the notice was served, the owner may then repossess the goods.

[34] The Fourth Schedule form reads as follows:

> NOTICE OF INTENTION TO RE-POSSESS
>
> [Section 16]
>
> Take notice that we ... the owner of * .... hired by you under an agreement dated the ..., intends to retake possession of the goods after the expiration of ... days from the service of this notice unless the arrears of instalments including arrears of interest due on overdue instalments which now amount to RM ... are paid to ... at ... on or before ...
>
> (a) Total amount payable** as at .../.../... : RM
>
> (b) Amount paid or provided by hirer to *** .../.../...: RM
>
> (c) Arrears under agreement to .../.../... : RM
>
> And further take notice that if the goods are returned to the owner within twenty-one days after the service on you of this notice, you will not be liable to pay the following namely:-
>
> (i) cost of repossession;
>
> (ii) cost incidental to taking possession; and
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> (iii) cost of storage.

[35] Subsection 16(1A) requires the owner to obtain a court order before he can secure the possession of the car. The next issue then is whether the requirement to obtain leave of court *via* the filing of the originating summons pursuant to sub-s. 16(1A) must be filed *ex parte* or *inter parte*.

[36] It is the decision of the learned High Court Judge that the application *via* an originating summons must be served on the respondent. The learned judge held that an application for leave to repossess under ss. 16(1A) and (1B) of the HPA 1967 cannot be made *ex parte*. His reasons are that proceeding without notifying the hirer would defeat the purpose of the statutory amendments and is inconsistent with O. 85A of the Rules of Court 2012. The learned judge also held that granting *ex parte* leave and repossessing the vehicle without serving the necessary documents violated the principles of natural justice and the *audi alteram partem* rule, as the hirer was entitled to be heard at every stage of the repossession procedure.

[37] We are of the considered opinion that the appellant's right to repossess a hire-purchase vehicle arises directly from statute and does not require any prior order of the court. This can be seen from sub-s. 16(1) which provides that the owner may repossess goods under a hire-purchase agreement only if the hirer has paid not more than 75% of the total cash price, has defaulted on at least two consecutive instalments, and has been served with a Fourth Schedule Notice, with 21 days having passed since its service.

[38] Therefore, we find that the purpose of the appellant's application to the court under sub-s. 16(1A) is limited only to obtaining leave to issue the statutory notices in situations where more than 75% of the vehicle's cash price has been paid by the respondent. This requirement for leave serves as a procedural safeguard to ensure that the statutory conditions, namely the existence of two consecutive instalment defaults and the applicability of the 75% rule, have been satisfied before the statutory notice is issued for the purpose of repossession.

[39] We emphasise that this leave is not an authorisation to repossess the vehicle. It merely permits the appellant to begin the statutory notice process required under the HPA 1967. Actual repossession may only be carried out after the statutory notices are duly served and the statutory period had expired without any payment made by the respondent.

[40] Therefore, we are of the considered opinion that the application to the court serves the narrow and specific purpose of enabling the appellant to issue the statutory notices in compliance with the HPA 1967, while simultaneously preserving the respondent's added protection in cases where more than 75% of the cash price has been paid.

[41] As such, we agree with the appellant that the Rules of Court 2012 allows an application for an originating summons to be filed *ex parte* when the application is simply to prove to the court that the instalment payments have exceeded 75% of the vehicle's price, and that there were two consecutive defaults on the hire-purchase account by the respondent.

[42] Indeed in both sub-s. 16(1) and sub-s. 16 (1A) of the HPA 1967, the right to be heard is already incorporated in the statutory notice, the Fourth Schedule. This statutory notice informs the hirer that the owner intends to repossess the goods after a specified number of days unless all outstanding instalments and interest are paid by a stated deadline. It also sets out the total amount payable, the amount already paid, and the arrears. If the hirer is not happy with the statutory notice after having been served of the same, then the hirer may initiate the process to set aside the statutory notice.

[43] As such, we cannot agree with the learned judge that the application for leave under sub-s. 16(1A) must be made *inter parte* and any breach of the same amount to a breach of natural justice. The purpose of getting the court's

leave to issue statutory notices is to ensure that the twin requirements under sub-s. 16(1A) has been met. The only difference between sub-s. 16(1) and sub-s. 16(1A) is that under sub-s. 16(1A), more than 75% of the cash price has been paid. Since the hirer has paid more than 75% of the loan agreement, it is only fair that before the car can be repossessed, leave must be obtained from the court to ensure the requirements of sub-s. 16(1A) has been met.

Conclusion

[44] For the aforesaid reasons, we allow the appeal and we set aside the decision of the learned judge, and we reinstate the decision of the Magistrates' Court. Since this appeal was heard in the absence of the respondent, who has since been adjudged a bankrupt and has failed to attend the court hearing, we make no order as to costs.